



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR RP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on April 2, 2020. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Landlord both attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's documentary evidence package.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, the Tenant requested to amend his application to remove his request for the repair of the dishwasher, given the COVID-19 pandemic. The Tenant did not want a repairman attending the rental unit to fix the dishwasher as this would compromise his health and safety during this pandemic. As such, I hereby amend the Tenant's application to remove his request for repairs to be made. The Landlord did not take issue with this. Further, there has already been an order of possession issued to the Landlord, and it appears the tenancy is ending once the provincial state of emergency has been lifted. It was explained to the parties that until the state of

emergency has been lifted, the Landlord could not enforce the order of possession at the Supreme Court.

The Tenant recognized that the tenancy was ending soon, based a previous agreement at their past hearing, and at this point is most concerned with getting a rent reduction for the many months he was without a dishwasher. As such, this is the issue that will be discussed further below.

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction for the loss of use of the dishwasher?

Background and Evidence

The Tenant stated he was the previous owner of the property, and last June 2019, the Landlord bought the property from him. The Tenant stated he continued to live in the house as he always had leading up to the sale of the house, but as of June 2019, he began renting the unit from the Landlord. The parties agree that there is no written tenancy agreement, but the main components of the verbal tenancy agreement are not disputed. They are:

- Monthly rent is \$2,000.00 per month, and is due on the first of the month.
- The Landlord does not hold a security deposit or pet deposit.
- A functioning dishwasher was present at the time the Tenant began renting the unit, in June 2019.

The parties also agree that on or around August 12, 2019, the Tenant's dishwasher broke, and flooded the unit. The Tenant asked the Landlord for repair, and the Landlord had a plumber come a couple of days later to inspect the dishwasher. At that time, the plumber opined that the dishwasher was not worth fixing, so the Landlord looked into replacing it.

The Landlord explained that he ordered a dishwasher on clearance at a large department store, and sometime late in August, he found out the order was delayed due to inventory issues. The Landlord stated he did not hear anything further until late November 2019, when the store cancelled his order, and notified him of such. At this point, the Landlord stated he did not pursue or order a different dishwasher because of

all the disputes they were having around the tenancy (other issues). The parties confirmed that the Landlord has still not replaced the dishwasher.

The parties disputed how much rent is owed at this point, but during the hearing both parties were reminded that this hearing was only about the Tenant's request for rent reduction based on his loss of use of the dishwasher and that any unpaid rent issue would need to be addressed separately.

The Tenant is seeking \$50.00 per month from August 2019, until April 2020. The Landlord feels this amount is "egregious" as it is not a material term of the tenancy, nor is it "essential".

Analysis

A party that makes an application against another party has the burden to prove their claim. In this case, the burden of proof rests with the Tenant.

The Tenant is seeking compensation for loss of use of his dishwasher starting in August 2019. I note that section 1 of the Act defines a "service or facility" as:

"Service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;***
- (b) utilities and related services;***
- (c) cleaning and maintenance services;***
- (d) parking spaces and related facilities;***
- (e) cablevision facilities;***
- (f) laundry facilities;***
- (g) storage facilities;***
- (h) elevator;***
- (i) common recreational facilities;***
- (j) intercom systems;***
- (k) garbage facilities and related services;***
- (l) heating facilities or services;***
- (m) housekeeping services;***

[My emphasis underlined]

Although the Landlord feels the dishwasher is not a material term of the verbal tenancy agreement, and the dishwasher is not essential to the tenancy, it remains undisputed that at the time the Tenant started renting the unit, there was a functioning dishwasher in the Tenant's kitchen. I note this dishwasher broke only two months after the Tenant started renting the unit. It is not necessary to determine whether or not the dishwasher is a material term of the tenancy agreement, as the issue here is whether or not the tenant is entitled to compensation due to the loss of an appliance, not whether or not the Landlord is entitled to terminate or restrict the service or facility. It appears the Landlord is not actively seeking to terminate or restrict the use of the dishwasher, but rather he has failed to take sufficient appropriate and productive steps to fix the appliance after it broke. The Tenant's application is focused on compensation due to the reduction in value of his tenancy agreement.

In any event, it was an appliance that was functioning and present at the start of the tenancy, and in the absence of a written tenancy agreement specifying otherwise, I find the dishwasher was included in the monthly rent and the Landlord had an obligation to repair and maintain the dishwasher.

Residential Tenancy Policy Guideline #22 - Termination or Restriction of a Service or Facility states as follows:

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

[...]

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

After considering the evidence before me, I note the Landlord was aware of the broken dishwasher around mid-August, 2019, and took steps fairly quickly to mitigate the impacts on the tenant. I note the Landlord ordered a new dishwasher in August, which shows he took affirmative action to remedy the matter. However, I do not find it is reasonable to wait for over 3 months for the dishwasher to be re-stocked in the store without pursuing other options. There is no evidence the Landlord took any steps to find

a suitable alternative, in a timely manner. Eventually the store cancelled the order as they did not get any inventory to fulfill the order. The Landlord knew of this in late November and at that point he did nothing to find an alternative. It appears the parties were already engaged in hearings about other issues, which exacerbated this issue. However, I do not find it absolves the Landlord from having to replace the dishwasher, just because other disputes are going on.

In any event, I find the Landlord failed to diligently pursue a remedy for the dishwasher, and his inaction and inattentiveness to the repair contributed to a reduction in the value of the tenancy for the Tenant over the material time. I find the landlord ought to have pursued other procurement options, rather than wait indefinitely for a product to be restocked. I find the Tenant's request of \$50.00 per month is reasonable, for the loss of his dishwasher. I award the Tenant \$50.00 for September 2019 through till April 2020. I decline to award any rent reduction for August, as the Landlord should be entitled to a short period of time to remedy the issue. I award the Tenant 8 x \$50.00.

Pursuant to section 72 of the Act, and given the Tenant was successful in his application, I award him recovery of the filing fee he paid for this application.

Accordingly, pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of \$500.00, which is due to the Landlord's failure to deal with the repair of the dishwasher in a reasonable and timely manner (reduction in value of the tenancy), and \$100.00 in recovery of the filing fee.

Any rent outstanding will be determined independently, at a future hearing.

Conclusion

I grant the Tenant a monetary order in the amount of \$500.00. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 02, 2020

Residential Tenancy Branch